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6
7 **UNITED STATES DISTRICT COURT**
8 **WESTERN DISTRICT OF WASHINGTON**
9 **AT SEATTLE**

10 VIRGIL ARMSTRONG,

NO.

11 Plaintiff,

COMPLAINT

12 v.

With Jury Demand

13 DEPUTY C. WHALEN, a Snohomish County
14 Sheriff's Deputy, in his individual, and the
15 marital community comprised thereof;
16 DEPUTY C. DAUGHERTY, a Snohomish
17 County Sheriff's Deputy, in his individual, and
18 the marital community comprised thereof;
19 DEPUTY K. OYETUGA, a Snohomish
20 County Sheriff's Deputy, in his individual
21 capacity, and the marital community
22 comprised thereof; TY TRENARY,
23 Snohomish County Sheriff, in his individual
24 capacity and in his official capacity as Sheriff,
25 Supervisor and Police Maker in his official
26 capacity; and SNOHOMISH COUNTY, a
municipal corporation,

Defendants.

COMES NOW the plaintiff, Virgil Armstrong, through his attorneys of record, Kannin Law Firm P.S., and hereby presents the following claims:

JURISDICTION

1. 1

2 Jurisdiction is founded upon the existence of a federal question.

2. 3

4 This is an action to redress the deprivation under color of statute, ordinance, regulation,
5 custom or usage of rights, privileges, and immunities secured to the plaintiff by the First, Fourth,
6 Sixth, Eighth, and Fourteenth Amendments to the Constitution of the United States (42 U.S.C. §
7 1983).

3. 8

9 Jurisdiction is founded upon 28 U.S.C. § 1331 and § 1343(3) and (4).

4. 10

11 Venue is proper in the Western District of Washington because the acts or omissions which
12 for the basis of the plaintiff's claims occurred in Snohomish County, Washington and the defendants
13 reside in Washington State
14

5. 15

16 At all times relevant to this complaint, plaintiff was an individual residing in Lynnwood,
17 Snohomish County, Washington.

6. 18

19 Defendant Snohomish County is a local sovereign government incorporated as a
20 municipal corporation. As such defendant Snohomish County exists is duly incorporated and
21 organized under the laws of the State of Washington. Defendant Snohomish County was the
22 employer of defendants Whalen, Daugherty, Oyetuga and Trenary at the time of the incidents
23 alleged herein.
24

7. 25

1 At all times relevant to this complaint, defendants Whalen, Oyetuga and Daugherty were
2 employed as Snohomish County Sheriff's Deputies by defendant Snohomish County. At all
3 times relevant to this complaint, defendant Trenary was employed as the Chief of the Snohomish
4 County Sheriff's Department by defendant Snohomish County.

5 8.

6 At all times relevant to this complaint, defendants Whalen, Daugherty, Oyetuga and
7 Trenary were acting within the scope of their employment for defendant Snohomish County and
8 along with defendant Snohomish County were acting under color of law.

9 9.

10 Plaintiff sues all individual defendants Whalen, Daugherty, Oyetuga, and Trenary in their
11 individual capacities and municipal defendants Trenary and Snohomish County in their/its
12 official capacities.

13 **FACTS**

14 10.

15 During the early morning hours of June 14, 2015 plaintiff Virgil Armstrong at his home
16 located at 15907 Ash Way #D506 Street in Lynnwood, Washington, 98087. Earlier in the
17 evening Mr. Armstrong had been studying for his real estate licensing exam. He finished his
18 studies, went to bed and fell asleep in his bedroom. Later, during the night plaintiff Armstrong
19 woke up in his bed room at his Lynwood apartment. He began to stand up and but was not able
20 to stand. He felt pain. He saw numerous cuts on his body and saw that his arms and legs were
21 bleeding. Unsure of exactly how he had been injured, plaintiff Armstrong again tried to stand up
22 but could not stand on his own two feet. Plaintiff Armstrong saw his legs were bleeding
23 extensively.

24 11.

25 Plaintiff Armstrong, not realizing how he had been an injured, knew that he was hurt, that

1 his injuries were serious and that he needed medical assistance Armstrong began to look for
2 his phone. He made his way from the bedroom to the living room. There, in the living room
3 plaintiff Armstrong saw that his large fish tank had fallen from its shelf onto the floor. Upon
4 falling the big glass tank had broken into pieces and shards of glass were strewn about on the
5 apartment's living room floor. Plaintiff also saw what looked like blood all around the living
6 room.

7 12.

8 Plaintiff Armstrong would eventually learn that sometime during the night, he, plaintiff
9 Armstrong, after falling asleep, got up from his bed while still asleep, and began walking around
10 his apartment. During my sleepwalking episode Plaintiff Armstrong sleep walked into his large
11 glass fish tank, inadvertently knocked it over. The glass tank fell onto the floor and broke into
12 pieces. Plaintiff Armstrong stumbled and fell onto the large pile of glass debris that was on the
13 floor. Plaintiff was asleep at the time of the accident. Armstrong's cuts and injuries were caused
14 by the sharp shards of broken tank glass.

15 13.

16 Plaintiff continued to look for his phone. He looked in his bedroom and then he looked in
17 living room. After moving around looking for his phone, plaintiff realized he was seriously hurt.
18 Plaintiff began feeling weak and faint. He still could not find his phone, so he went to the front
19 door of his apartment, opened it, and called out for help. Armstrong was hoping one of his
20 neighbors would respond to his calls for help and come to his assistance. Unfortunately, none of
21 his neighbors responded to his calls for help. Armstrong went back inside his apartment and
22 closed the door. Armstrong realized he had lost a significant amount of blood and that he was
23 still bleeding, so he sat down on the living room floor.

24 14.

25 As plaintiff Armstrong was sitting on his living room floor, the front door of his

1 apartment opened. At least three Snohomish County Sheriff's deputies came into plaintiff's
2 apartment. The deputies were defendants Whalen, Daugherty, and Oyetuga. The defendants
3 had their handguns and tasers drawn out of their holsters and in their hands. Defendants Whalen,
4 Daugherty, and Oyetuga pointed their weapons at plaintiff Armstrong.

5 15.

6 Upon seeing the deputies, plaintiff Armstrong believed they had come to his rescue.
7 Plaintiff Armstrong told the defendants he was badly hurt. As he looked at the Defendants,
8 Plaintiff said thank God you are here to help me. Dressed only in boxer shorts plaintiff
9 Armstrong was bleeding from the cuts and wounds all over his body. He was obviously injured.
10 The defendant deputies yelled back at Armstrong and ordered plaintiff Armstrong to get face
11 down onto the floor. Plaintiff Armstrong tried to tell the defendants that the floor was covered
12 with broken glass. At the same time one of the defendants was yelling at Armstrong to get face
13 down into the broken glass that was on the floor, another defendant was demanding that
14 Armstrong answer his questions about whether there was someone else inside the apartment with
15 Armstrong. Plaintiff Armstrong told the defendants there was no one else inside his home with
16 him. Armstrong attempted to tell the defendants that it was too dangerous to lay on the glass
17 covered floor, that the glass on the floor is what had cut him, and the broken glass is what had
18 caused his obvious injuries. The defendants did not listen to plaintiff Armstrong, disregarded
19 Armstrong's answers to their questions. Next the three defendant deputies Whalen, Daugherty,
20 and Oyetuga shot and fired their Taser weapons at plaintiff Armstrong. The defendants' Taser
21 projectile darts hit plaintiff Armstrong multiple times. The defendants' Taser darts struck
22 Armstrong's body. Armstrong felt a painful burning sensation when the defendants' Tasers
23 injected a powerful electrical current into his body. The current caused Armstrong's body to jerk
24
25

1 and move involuntarily as the Tasers' electrical current went through him such that his body
2 struck hard against a closet and broke the closet door. Plaintiff reacted involuntarily, and fell to
3 the floor. Plaintiff Armstrong had burn marks on his body from where the defendants' Taser
4 darts struck him. Plaintiff Armstrong yelled out why are you doing this to me? Plaintiff was on
5 the floor convulsing from the electrical shock. This further injured him and cut and worsened his
6 open wounds.

7
8 16.

9 Next the deputies forced Plaintiff forward back onto the floor and handcuffed his wrists
10 behind his back. In the process the defendants caused further injury, pain and suffering to the
11 already seriously injured plaintiff Armstrong. The defendants put plaintiff Armstrong face
12 down onto a board, strapped him to the board, and removed plaintiff Armstrong from his home.
13 The police loaded the handcuffed and back-boarded Armstrong into a police vehicle and took
14 him away. On the way to the hospital plaintiff Armstrong asked the defendants to take the
15 handcuffs off his wrists or to at least loosen them, because the defendants' handcuffs were
16 further injuring him and worsening his existing injuries. The defendants denied his request. One
17 of the defendants told plaintiff Armstrong to shut up, used expletives when he told the plaintiff to
18 shut up and told Armstrong not to ask again to have the handcuffs loosened. During the ride to
19 the hospital the defendants' handcuffs continued to cause plaintiff Armstrong intense pain,
20 caused his further suffering, and exacerbated his obvious injuries. Plaintiff Armstrong again
21 asked the defendants again to please loosen their handcuffs and told them the handcuffs were
22 hurting him and making his injuries worse. One of the defendants responded by laughing at
23 Armstrong, pulled a baggie out of his pocket and took what looked like a little brown stone out
24 of the baggie. Next, he took the little brown stone and put it into plaintiff Armstrong's mouth.
25 Defendant deputy held plaintiff's mouth closed and another defendant put a bag over

1 Armstrong's head. They held his mouth closed and forced the plaintiff to swallow what they had
2 put into his mouth.

3 17.

4 Defendants Whalen, Daugherty, and Oyetuga caused plaintiff Armstrong to be
5 transported to the Providence Medical Center Everett hospital emergency room (ER). The ER
6 doctors and staff treated Armstrong for his injuries. ER doctors diagnosed plaintiff Armstrong as
7 having suffered a laceration of left Achilles tendon, laceration of his left thumb with tendon
8 involvement, laceration of left and right lower leg with foreign body, acute blood loss, anemia,
9 laceration of his right foot and hand, acute psychosis, and hemorrhagic shock.

10 18.

11 Upon delivering plaintiff Armstrong to the hospital's emergency room the defendants
12 told the hospital staff that plaintiff Armstrong had tried to kill himself and thus he was a danger
13 to himself and others. The defendants relayed inaccurate and untrue information about the
14 Plaintiff to the hospital medical staff. This misinformation led the hospital's medical staff to take
15 actions that were otherwise unnecessary, and which further caused and contributed to the
16 Plaintiff's harms, injuries, loss of his personal liberty, deprivation of his rights, his pain and
17 suffering.

18 19.

19 Defendant Whalen submitted a written report in which he reported that as a result of a
20 mental disorder plaintiff Armstrong presents an imminent likelihood of harm to himself and
21 others, plaintiff Armstrong is gravely disabled, and is a danger to the property of others.

22 20.

23
24 Defendants caused Plaintiff Armstrong to suffer serious, disabling, permanent personal
25 injuries and/or exacerbated his pre-existing injuries, that required the expenditure of money for

1 medical treatment and will continue to require the expenditure of money for medical treatment.

2 21.

3 Defendants caused Plaintiff Armstrong to suffer serious, disabling, permanent personal
4 injuries and/or exacerbated his pre-existing injuries, that resulted in his lost wages and
5 diminished earning capacity.

6 22.

7 The defendant police deputies Whalen, Daugherty, and Oyetuga had no warrant for the
8 arrest of the plaintiff. When the defendants arrived and entered plaintiff's home the plaintiff had
9 not committed a crime, was not a danger to anyone and needed emergency medical assistance.
10 Plaintiff had not been diagnosed with a mental illness that made him a danger to himself or
11 anyone else. Plaintiff had just been in a household accident that severely injured him, and he had
12 called out for help. Defendants, upon finding the injured plaintiff there at his home in need of
13 medical assistance, offered no medical assistance or first aid, and instead used force to take
14 plaintiff into custody and cause him to be admitted into a hospital ward from which plaintiff was
15 not free to leave.

16 23.

17 At all times during the events described herein the defendant police deputies were
18 engaged in a joint venture. The individual defendant deputies assisted each other in performing
19 the various actions described herein and lent their physical presence and support, and the
20 authority of their office to each other during said events.

21 24.

22 At all times during the events described herein defendant officer Whalen was with
23 defendant deputies Oyetuga and defendant Daugherty during the Taser shooting. Defendant
24 officer Whalen did not stop or attempt to stop the other defendant deputies from shooting
25

1 Armstrong with their Taser weapons. The other defendant deputies, Oyetuga and defendant
2 Daugherty did nothing to stop each other and did nothing to stop defendant Whalen

3 25.

4 At all times during the events described herein the defendant police officers Whalen,
5 Oyetuga, and Daugherty acted in concert and had a common plan to that caused the deprivation
6 of Plaintiff's rights and caused him further bodily injury, pain and suffering.

7 26.

8 Deployment of the Taser weapon by defendant Daugherty was approved and ordered by
9 the Snohomish County Sheriff's Department. Defendant Trenary was the chief of the defendant
10 Snohomish County Sherriff's Department when the Taser weapon was procured, added to the
11 Snohomish County Sherriff's Department arsenal, and deployed in the Snohomish. Moreover,
12 defendant Trenary was the chief of the Snohomish County Sherriff's department when
13 defendants Daugherty, Oyetuga, and Whalen were approved to use and ordered to carry and use
14 the Taser weapon.

15 27.

16 The Taser weapon provided to the individual defendant deputies in this case by
17 defendants Snohomish County Sherriff Trenary came with a Taser International product warning
18 pamphlet. Product warnings are also believed to be issued to law enforcement as they are
19 updated, and the warnings are available from the manufacturer to law enforcement at any time.
20 The pamphlet states that the Taser is not to be deployed simultaneously, continuously, or
21 repeatedly. According to the Taser manufacturer, the user should minimize repeated, continuous,
22 and/or simultaneous exposures. TASER device users should only use the number of electronic
23 control device (ECD) exposures which are objectively reasonable to accomplish lawful
24 objective(s). Repeated, continuous, and/or simultaneous use of TASER devices should be used
25

1 only when objectively reasonable given the totality of the circumstances and reasonable efforts
2 should be made to continuously assess the circumstances to minimize the number of ECD
3 exposures. Additionally, the manufacturer identifies specific target areas on the human body that
4 are to be avoided such as the area of a pre-existing injury on the body of a person who is being
5 targeted. The manufacturer further identifies specific places where its Tasers should not be used
6 such as in those locations where further injury was likely to occur such as the location of a floor
7 covered in broken glass where person who is being targeted may fall onto the broken glass or
8 writhe in glass upon charged with a Taser's electrical voltage. In this case, the individual
9 defendants repeatedly, continuously, and/or simultaneously fired their Taser weapons upon Mr.
10 Armstrong in violation of the Taser weapon manufacturer's warnings.

11
12 28.

13 The weapon's manufacturer, Taser International, (now Axon) has identified the standards
14 for police agencies deploying and using the Taser. Defendant Snohomish County's written
15 Taser policy fails to comply with the manufacturer of the weapon, Taser International's
16 requirements for operating its weapons. Taser International's deployment and operation
17 requirements and standards are set forth to ensure that its Taser weapons are not used
18 unreasonably and to ensure they are not used to inflict unnecessary pain and/or cause
19 unnecessary injuries or result in illegal application of excessive police force. Since the
20 Snohomish County Sheriff's Department's Taser use of force policy failed to comply with the
21 manufacturer's policy, defendant Snohomish County's policy is an unconstitutional policy,
22 practice or custom.

23
24 29.

1 Defendant Sheriff Trenary is believed to be defendant municipal corporation Snohomish
2 County's chief policy maker with regard to implementing the Snohomish County Sheriff's
3 Department's use of force policies, practices and customs. He is further believed to be defendant
4 Snohomish County's representative who ultimately approved, and/or ratified the other
5 defendants' use of force in this case.

6 30.

7
8 As a direct and proximate result of the said acts of the defendants the plaintiff Virgil
9 Armstrong suffered the following injuries and damages:

10 a. Violation of his constitutional rights under the Fourth and Fourteenth Amendments to
11 the United States Constitution to be free from an unreasonable search and seizure of his person;

12 b. Physical pain and suffering requiring the expenditure of money for treatment;

13 c. Economic and non-economic damages incurred and expected to be incurred, in an
14 amount to be established at trial.

15 31.

16 The actions of the defendants further violated the following clearly established and well-
17 settled federal constitutional rights of Virgil Armstrong:

18 a. Freedom from the use of excessive and unreasonable force
19 against his person.

20 b. Denial of his right to speak freely under the First amendment.

21 c. Freedom from the use of excessive, unreasonable and/or unjustified force
22 against his person after he was arrested and became a prisoner in the custody of
23 the defendants at which time he was also denied access to legal counsel.

24 d. Causing plaintiff to be committed into a locked hospital ward based on false
25 information and without any review or hearing to determine the necessity of

depriving the plaintiff of his personal liberty.

**FIRST CLAIM: UNDER 42 U.S.C § 1983 AGAINST DEFENDANTS OYETUGA
WHALEN, AND DAUGHERTY IN THEIR INDIVIDUAL CAPACITIES (EXCESSIVE
FORCE)**

32.

Plaintiff re-alleges paragraphs 1 through 31 above.

33.

42 U.S.C. § 1983 provides in part:

Every person who, under color of any statute, ordinance, regulation, custom, or usage of any State or Territory subjects, or causes to be subjected, any person of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws shall be liable to the party injured in an action at law, suit at equity or other proper proceeding for redress.

34.

Plaintiff Armstrong had a firmly established right under the Fourth Amendment forbidding unlawful and unreasonable seizure and granting him the rights to be free from physical abuse, excessive force, and the use of force to cause him to suffer as well as a firmly established right to be free from excessive force being used against him to effect an arrest, search or seizure.

35.

Defendants Oyetuga, Whalen and Daugherty breached the aforementioned duty to refrain from depriving plaintiff of his constitutional rights by using unreasonably excessive force to arrest Armstrong, on June 14, 2015 which constituted a violation of plaintiff's clearly-established rights under the Fourth and Fourteenth Amendments to the Constitution of the United States, forbidding unlawful and unreasonable seizure.

36.

Defendants Whalen, Oyetuga and Daugherty were, at the time, performing their duties as deputies for Defendant Snohomish County.

37.

Plaintiff was subjected to physical injury, pain, and fear by the illegal acts of defendants and claims damages, attorney fees, and punitive damages for the injuries set forth herein under 42 U.S.C. § 1983 against defendants Oyetuga, Whalen and Daugherty for violation of his constitutional rights under color of law in an amount to be proven at trial.

38.

The conduct of the defendants was knowing, intentional, and malicious, by reason of which plaintiff is entitled to punitive damages.

**SECOND CLAIM: UNDER 42 U.S.C § 1983 AGAINST DEFENDANTS OYETUGA
WHALEN AND DAUGHERTY IN THEIR INDIVIDUAL CAPACITIES FOR
VIOLATION OF PLAINTIFF'S FIRST AMENDMENT RIGHTS**

39.

Plaintiff re-alleges paragraphs 1 through 38 above.

40.

At all times material herein, defendants Oyetuga, Whalen and Daugherty, acting under color of state law, had a duty to refrain from depriving plaintiff Armstrong of his constitutional rights. Defendants Oyetuga, Whalen and Daugherty breached the duty by forcibly preventing Mr. Armstrong from exercising his clearly-established First Amendment right to speak freely when he tried to tell him he was hurt and needed help. Instead of letting him talk and instead of helping him they shot him with Tasers.

41.

1 Plaintiff Armstrong claims damages for the injuries set forth above under 42 U.S.C. §
2 1983 against defendants deputies Oyetuga, Whalen and Daugherty for violation of his
3 constitutional rights under color of law in an amount to be proven at trial.

4 42.

5 The conduct of the defendants was knowing, intentional, and malicious, by reason of
6 which plaintiff is entitled to punitive damages.

7
8 **THIRD CLAIM UNDER 42 U.S.C § 1983 AGAINST DEFENDANTS OYETUGA**
9 **WHALEN AND DAUGHERTY IN THEIR INDIVIDUAL CAPACITIES FOR**
10 **VIOLATION OF PLAINTIFF'S FOURTH, SIXTH, EIGHTH AND FOURTEENTH**
11 **AMENDMENT RIGHTS (IN CUSTODY CRUEL AND UNUSUAL PUNISHMENT -**
12 **EXCESSIVE FORCE AND LOSS OF PERSONL LIBERTY)**

11 43.

12 Plaintiff re-alleges paragraphs 1 through 42 above.

13 44.

14 Defendants Oyetuga, Whalen and Daugherty breached the aforementioned duty to refrain
15 from depriving plaintiff of his constitutional rights by using unreasonably excessive force on Mr.
16 Armstrong once he became a prisoner in their custody, which constituted a further violation of
17 plaintiff's clearly-established rights under the Fourth, Sixth, Eighth and Fourteenth Amendments
18 to the Constitution of the United States, using unreasonable force to punish and/or further injure
19 Armstrong, a person detained and arrested by the defendants and imprisoned by the defendants
20 after they removed him from his home, put him in handcuffs and caused him to be detained in a
21 police vehicle and a locked hospital ward without telling him why he was arrested, detained and
22 not allowed to leave.

23 45.

24 Plaintiff Armstrong claims damages for the injuries set forth above under 42 U.S.C. §
25 1983 against defendants Oyetuga, Whalen and Daugherty for violation of his constitutional

rights under color of law in an amount to be proven at trial.

46.

The conduct of the defendants was knowing, intentional, and malicious, by reason of which plaintiff is entitled to punitive damages.

**FOURTH CLAIM - CIVIL RIGHTS VIOLATION UNDER 42 U.S.C § 1983 –
OFFICIAL CAPACITY CLAIM AGAINST DEFENDANT SHERIFF TY TRENARY
AND MUNICIPAL DEFENDANT SNOHOMISH COUNTY**

47.

Plaintiff re-alleges paragraphs 1 through 46 above.

49.

Prior to June 14, 2015 defendant Ty Trenary developed and or maintained policies or customs exhibiting deliberate indifference to the constitutional rights of those people thought to be mentally ill and arrested and/or detained by Snohomish County Sheriff's Deputies prior to any probable cause hearing or trial caused the violation of plaintiff Armstrong's civil rights.

50.

At the time of the incident involving plaintiff Armstrong the defendant Snohomish County's Taser use of force policy was unconstitutional for all the reasons set forth above. Defendant Trenary was reasonable for implementing this policy. At the time of the incident involving plaintiff Armstrong it is believed that it was the policy and, or custom of the Snohomish County Sheriff's Department to inadequately and, or improperly investigate incidents of officer misconduct involving the use of physical force and the use of less than lethal weapons such as the Taser, on detainees, and said acts of misconduct were instead tolerated and/or ratified by defendant Sheriff Trenary, and Snohomish County.

51.

1 At the time of the incident involving plaintiff Armstrong it is believed that it was the
2 policy and, or custom of defendant Sheriff Trenary, to inadequately and improperly investigate
3 incidents of officer's misconduct involving the first amendment rights of detainees and said acts
4 of misconduct were instead tolerated and/or ratified by defendant Sheriff Trenary and by
5 Snohomish County.

6 52.

7 At the time of the incident involving plaintiff Armstrong it is believed that it was the
8 policy and, or custom of defendant Sheriff Trenary, to inadequately and improperly investigate
9 incidents of officer's misconduct involving excessive force and/or cruel and unusual punishment
10 of detainees and/or individuals thought to be mentally ill and said acts of misconduct were
11 instead tolerated and/or ratified by defendant Sheriff Trenary and by Snohomish County.

12 53.

13 At the time of the incident involving plaintiff Armstrong, it is believed that it the policy
14 or custom, and, defendant Sheriff Trenary's policy or custom to inadequately supervise and train
15 Snohomish County Sheriff's Deputies, including defendants Oyetuga, Whalen and Daugherty,
16 thereby failing to adequately discourage further violations on the part of the Snohomish County
17 Sheriff's Department deputies. Defendant Sheriff Trenary did not require appropriate in-service
18 training or retraining of deputies who were known to have engaged in misconduct by using force
19 against detainees such as plaintiff Armstrong.

20 54.

21 Because of the above described policies and customs, Snohomish County Sheriff's
22 Deputies, including defendants Oyetuga, Whalen and Daugherty, believed that their actions or
23 inactions would not be properly monitored by supervisory deputies and that the defendant
24 deputies' misconduct would not be investigated or sanctioned but would be tolerated.

25 55.

1 The above described policies and customs demonstrated a deliberate indifference on the
 2 part of policymaker defendant Sheriff Trenary and the policymakers of Snohomish County to the
 3 constitutional rights of persons detained within Snohomish County prior to their probable cause
 4 hearing and were a cause of violations of plaintiff's rights alleged herein.

5 56.

6 The aforementioned policies, customs and practices, whether official, *de facto*, by policy
 7 making authority or through failure to adequately train and supervise and the acts and omissions
 8 that violate the U.S. Constitution and its First, Fourth and Fourteenth Amendments, alleged
 9 herein, were the underlying causes of plaintiff Armstrong's injuries, harms and damages thereto.
 10 Plaintiff Armstrong claims damages for the injuries set forth above under 42 U.S.C. § 1983
 11 against defendants Snohomish County and Sheriff Trenary for violation of his federal
 12 constitutional rights under color of law in an amount to be proven at trial.

13
 14 **FIFTH CLAIM: VIOLATION OF TITLE II OF 42 U.S.C. § 12131 - § 12134 OF THE**
 15 **AMERICANS WITH DISABILITIES ACT (ADA), REASONABLE**
 16 **ACCOMMODATION, AGAINST DEFENDANTS OYETUGA WHALEN AND**
 17 **DAUGHERTY AND MUNICIPAL CORPORATION SNOHOMISH COUNTY.**

18 57.

19 Plaintiff re-alleges paragraphs 1 through 56 above.

20 58.

21 Subject to the provisions of 42 U.S. Code § 12132, no qualified individual with a
 22 disability shall, by reason of such disability, be excluded from participation in or be denied the
 23 benefits of the services, programs, or activities of a public entity, or be subjected to
 24 discrimination by any such entity. This law, the ADA, applies to all the operations of a public
 25 entity police department, including arrests.

26 59.

Defendants alleged that plaintiff Armstrong was gravely disabled, that as a result of a

1 mental disorder plaintiff Armstrong presented an imminent likelihood of harm to himself and
 2 others, and that plaintiff Armstrong was a danger to the property of others.

3 60.

4 Since the defendants alleged and according to them believed that plaintiff Armstrong was
 5 disabled, and thus was a qualified individual in accordance with 42 U.S. Code § 12131 (2), at
 6 all times material herein, defendants Oyetuga, Whalen and Daugherty, and their employer
 7 defendant Snohomish County had a duty to make reasonable modifications when arresting an
 8 individual with a disability or whom they reasonably believe had a disability, and their
 9 employer defendant Snohomish County had a duty to ensure its employees make reasonable
 10 modifications when arresting an individual with a disability or whom they reasonably
 11 believe had a disability.
 12

13 61.

14 Defendants Oyetuga, Whalen and Daugherty, failed to make a reasonable
 15 modification when arresting and/or seizing plaintiff Armstrong an individual with a
 16 disability or whom they reasonably believe had a disability. and their employer defendant
 17 Snohomish County failed to ensure its employees, defendants Oyetuga, Whalen and Daugherty
 18 made reasonable modifications when arresting and/or seizing plaintiff Armstrong, they
 19 thereby by violated the Americans with Disabilities Act (ADA) 42 U.S.C. § 12131 - § 12134
 20 and are liable to plaintiff Armstrong.
 21

22 60.

23 Plaintiff Armstrong claims damages for the injuries set forth above under 42 U.S.C. §
 24 12131 - § 12134 against defendants Oyetuga, Whalen, Daugherty and Snohomish County in an
 25 amount to be proven at trial.

26 COMPLAINT - Page 18

**FIFTH CLAIM: VIOLATION OF CIVIL CONSPIRACY AGAINST
DEFENDANTS OYETUGA, WHALEN, AND DAUGHERTY**

61.

Plaintiff re-alleges paragraphs 1 through 60 above.

62.

On or about June 14, 2015, and dates after, defendants Oyetuga, Whalen and Daugherty, acting under color of law, combined to act in concert to commit an individual act, or acts, or to commit a lawful act by unlawful means, the principal element of which was an agreement between and among the defendants to inflict a wrong against, or injury upon the plaintiff Virgil Armstrong. The defendants' acts, and failures to act, occurring from June 14, 2015 and following dates, were overt acts that resulted in damage and harm to the plaintiff, including personal injuries, loss of personal liberty, lost wages, pain, suffering, humiliation, frustration, and permanent disability and disfigurement.

63.

Plaintiff Armstrong claims damages for the injuries set forth above against defendants Oyetuga, Whalen and Daugherty.

**SIXTH CLAIM: *RESPONDEAT SUPERIOR* AGAINST DEFENDANT
MUNICIPAL CORPORATION SNOHOMISH COUNTY ITS DEFENDANT OFFICERS'
CIVIL CONSPIRACY**

64.

Plaintiff re-alleges paragraphs 1 through 63 above.

65.

At all times, relevant herein, the Snohomish County was the employer of the defendants Oyetuga, Whalen, Daugherty, were acting within the scope of their employment with the Snohomish County when they conspired together, the result of which inflicted a wrong or

wrongs against and/or injuries upon the plaintiff.

66.

As a direct and proximate result of the defendants' conspiracy, plaintiff defendants Oyetuga, Whalen, Daugherty was injured and has incurred substantial damages in an amount to be established at trial.

67.

Therefore, Defendant Snohomish County is liable for its employees' civil conspiracies under the theory of *respondeat superior*.

68.

JURY DEMAND

The plaintiff respectfully requests trial by jury.

RELIEF REQUESTED

WHEREFORE, the Plaintiff Virgil Armstrong prays for judgment in an amount to be established at trial, including:

- a. Economic damages to plaintiff against the defendants jointly and severally;
- b. Non-economic damages to plaintiff against the defendants jointly and severally;
- c. Punitive damages against the defendant deputies Whalen, Oyetuga and Daugherty, pursuant to 42 U.S.C. § 1983;
- d. Reasonable attorney's fees and costs to the plaintiff under 42 U.S.C. § 1988, 42 U.S. C. § 12133 and 29 U.S.C. § 794a;
- e. Costs of this action to the plaintiff under 42 U.S.C. § 1988, 29 U.S.C. § 794a, and RCW 4.84 other applicable state and federal statutes and rules;
- f. Such other relief as this court may deem equitable.

DATED this 11th day of June 2018.

COMPLAINT - Page 20

KANNIN LAW FIRM P.S.

By: /s/ John Kannin
John Kannin, WSBA #27315
Attorney for Plaintiff